

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

CRIMINAL NO. 1:00CR9

UNITED STATES OF AMERICA

VS.

DAVID FRANKLIN RUTHERFORD

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ORDER

THIS MATTER is before the Court *sua sponte*.

The Defendant was sentenced by the undersigned on December 12, 2000, to a prison term of 240 months for conspiracy to possess with intent

to distribute cocaine base. **Judgment in a Criminal Case, filed**

December 21, 2000. On May 20, 2009, the Probation Office filed a

Supplement to the Defendant's presentence report pursuant to the Crack

Cocaine Guideline Amendment. **Supplement to the Presentence**

Report, filed May 20, 2009. The Probation Office advises that pursuant to

Guidelines § 5G1.1, the sentence imposed may not be below the statutorily required minimum sentence. ***Id.* at 1.** If Amendment 706 had been in

place at the time of Defendant's sentence, the guideline range would have

been the mandatory minimum sentence of 240 months; therefore, the new amendment has no effect on the Defendant's sentence. *Id.* Because this recommendation is adverse to the Defendant, the Court will require counsel be appointed to represent the Defendant and appointed counsel shall file an appropriate response.

IT IS, THEREFORE, ORDERED that the Federal Defender appoint counsel for the Defendant forthwith.

IT IS FURTHER ORDERED that appointed counsel file response to the Supplement to the Presentence Report within 45 days from entry of this Order.

The Clerk is directed to provide appointed counsel with a copy of this Order.

Signed: May 20, 2009



Lacy H. Thornburg
United States District Judge

